OIPE IAP84
MAR 08 2006
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BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES

In re Application of	:	Raymond S. Bamford et al.
Serial No.	:	09/843,550
Filed	:	4/26/2001
Art Unit	:	3639
Examiner	:	Akiba K. Robinson-Boyce
Title	:	PRICING ENGINE FOR ELECTRONIC COMMERCE
Atty. Docket No.	:	ENOS0003

Honorable Commissioner of
Patents and Trademarks
Alexandria, Virginia 22313-1450

BRIEF ON APPEAL

This is Applicant's Appeal Brief in the above-captioned patent application.

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REAL PARTY IN INTEREST

Initially, the subject application was assigned by the inventors to Enosys Markets, Inc. by an assignment recorded in the U.S. Patent & Trademark Office on April 26, 2001 at real/frame 011791/0760. More recently, due to merger of Enosys Markets, Inc. with a wholly owned subsidiary of BEA Systems, Inc., the application is now owned by BEA Systems, Inc. Applicant recently submitted documentation of the merger to the U.S. Patent & Trademark Office for recordation, and such recordation is now pending.

RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to be related to the subject patent application.

STATUS OF CLAIMS

Claims 1-25 stand rejected.

STATUS OF AMENDMENTS

No amendments have been made after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Concise Explanation of Subject Matter

As recommended by MPEP 1206, the following summary of the invention comprises reading of each appealed independent claim on the drawings and specification, to enable the Board to more determine where the claimed subject matter appears in the application. This particular reading is not intended to limit the claims in

any way.

For ease of reference, all Figures of Applicants' drawings are shown in the attached Appendix.

Claim 1

A computer-implemented method (Fig. 2; Abstract) for determining a price of goods made by a manufacturer in response to at least one electronic price request from a buyer for the goods, comprising the acts of:

receiving the electronic price request from the buyer; (Fig. 2, ref. 42; Page 1, last para. – Page 2, first para.; Page 2, second para.; Page 6, second para.; Page 7, second para.)

in response to the electronic price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place; (Fig. 2, ref. 46; Fig. 3; Page 2, second para.; Page 7, second para.)

computing a price of the goods to the buyer based at least partially on the determining act; (Fig. 3-6; Page 2, second para. – Page 3, second para.; Page 7, last para. – Page 13, last para.)

providing the buyer with a machine-readable signal for displaying the computed price. (Fig. 48, ref. 48; Fig. 3, ref. 70; Page 2, second para. – Page 3, fourth para.)

Claim 9

A computer (Fig. 1; Page 3, third para.; Page 4, second section - Page 6, fourth para.) having logic executable by the computer to perform method acts for determining

a price of goods made by a manufacturer in response to at least one electronic price request from a buyer for the goods, said method acts comprising:

receiving the electronic request from the buyer; (Fig. 2, ref. 42; Page 1, last para. – Page 2, first para.; Page 2, second para.; Page 6, second para.; Page 7, second para.)

in response to the electronic request, determining whether title to the goods passes directly from a manufacturer to a buyer or through an intermediate e-market place; (Fig. 2, ref. 46; Fig. 3; Page 2, second para.; Page 7, second para.)

computing a price of the goods to the buyer based at least partially on the determining act; (Fig. 3-6; Page 2, second para. – Page 3, second para.; Page 7, last para. – Page 13, last para.)

providing the buyer with a machine-readable signal for displaying the computed price. (Fig. 48, ref. 48; Fig. 3, ref. 70; Page 2, second para. – Page 3, fourth para.)

Claim 17

A computer program product (Page 3, fourth para.; Page 6, last para. – Page 7, first para.) having logic means executable by a computer to determine a price of goods made by a manufacturer in response to at least one electronic price request from a buyer for the goods, comprising: computer readable code means for receiving the electronic price request from the buyer;

computer readable code means responsive to receiving the electronic price request for determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place; (Fig. 2, ref. 42, 46; Fig. 3; Page 1, last para. – Page 2, second para.; Page 2, second para.; Page 6, second

para.; Page 7, second para.)

computer readable code means for computing a price of the goods to the buyer based at least partially on the determining; (Fig. 3-6; Page 2, second para. – Page 3, second para.; Page 7, last para. – Page 13, last para.)

computer readable code means for providing the buyer with a machine-readable signal for displaying the computed price. (Fig. 48, ref. 48; Fig. 3, ref. 70; Page 2, second para. – Page 3, fourth para.)

Claim 25

At least one digital data processing machine programmed to cooperatively perform operations for determining a price of goods made by a manufacturer in response to at least one electronic request for quote (RFQ) from a prospective buyer of the goods, the operations comprising:

receiving from the buyer an electronic message comprising an RFQ; (Fig. 2, ref. 42; Page 1, last para. – Page 2, first para.; Page 2, second para.; Page 6, second para.)

responsive to receiving the RFQ, determining a price of the goods based at least partially upon a manufacturer's specification as to whether title to the goods will pass directly from the manufacturer to the buyer or through an intermediate; (Fig. 2, ref. 46; Figs. 3-6; Page 2, second para. – Page 3, second para.; Page 7, second para. & last para. – Page 13, last para.)

transmitting an electronic message representing the determined price to the buyer. (Fig. 48, ref. 48; Fig. 3, ref. 70; Page 2, second para. – Page 3, fourth para.)

Identification of Means Plus Function & Step Plus Function Claims

In accordance with 37 CFR 47.37(c)(1)(v), the following is an identification of all independent and separately argued dependent claims in means (or step) plus function as permitted by 35 USC 112 para. 6: Claims 17, 22.

Corresponding structure, material, or acts is found in and at least the following locations: Fig. 2, ref. 42, 46; Figs. 3-6; Page 1, last para. – Page 3, fourth para.; Page 6, second para. & last para. – Page 7, second para.; Page 7, last para. – Page 13, last para.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following rejection(s) were made in the final office action dated January 9, 2006, which is enclosed in the Appendix. Claims 1-25 stand rejected under 35 USC 102e as being unpatentable over U.S. Patent No. 6,754,636 to Walker et al. ("Walker").

GROUPING OF CLAIMS

The claims do not stand or fall together. The groupings of claims, which are independently patentable are as follows:

- One group including claims 1-5, 7-13, 15-21, and 23-25.
- Another group including claims 6, 14, 22.

ARGUMENT

Subparagraph (i) 35 USC 112, FIRST PARAGRAPH

No grounds of rejection exist under this subparagraph.

Subparagraph (ii) -- 35 USC 112, SECOND PARAGRAPH

No grounds of rejection exist under this subparagraph.

Subparagraph (iii) -- 35 USC 102

Claims 1-25 were rejected under 35 USC 102(e) as being unpatentable over Walker. Applicant traverses this rejection because the applied art does not teach the features of the claims, as required. Taking claim 1 as an example, Walker fails to teach the following combination:

> "A computer-implemented method for determining a price of goods made by a manufacturer in response to at least one electronic price request from a buyer for the goods, comprising the acts of:
>
> receiving the electronic price request from the buyer;
>
> in response to the electronic price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place;
>
> computing a price of the goods to the buyer based at least partially on the determining act;
>
> providing the buyer with a machine-readable signal for displaying the computed price."

The examiner bears the burden of establishing a *prima facie* case of anticipation.[1] The

1 In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138-139 (Fed. Cir. 1986).

prior art reference must disclose each element of the claimed invention, as correctly interpreted, and as arranged in the claim.[2] A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim.[3]

In general, Walker concerns purchasing systems where a buyer purchases goods online, but takes possession at a local retailer. [Walker: col. 1, lines 38-44] By aiding buyers to purchase online yet physically collect the goods at a local retailer, Walker's system is said to help manufacturers establish a pricing relationship directly with buyers without establishing their own online service in direct competition with their retailer's tradition distribution channel. [Walker: col. 2, lines 48-56] Also, this is said to avoid drawbacks of having to ship products to customers. [Walker: col. 2, lines 17-26] Of course, the retailer receives money for its part in the transaction. [Walker: FIG. 15] The system of Walker diverges from claim 1 in a number of important respects, as explained below.

As a specific example, Walker further lacks the claimed combination including an operation of "receiving the electronic price request" from a buyer of goods. In contrast, Walker's purchasing system device 300 acts responsive to a buyer offer, which includes a buyer-defined offer price. Indeed, Walker utilizes a completely different approach in which the buyer proposes a sales price. [Walker: col. 5, lines 18-35] See also, Walker's col. 7 (lines 48-61), col. 8 (lines 3-30), col. 10 (lines 23-29), FIGS. 12A-12B,

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2 Lindermann Maschinefabrik Gmbh v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984).

col. 12 (lines 29-43), as well as many more occasions.

Therefore, in Walker there is no electronic price request. If a seller agrees to the buyer's offer, the buyer pays and a retailer makes the product available to the buyer. Walker's purchasing system, in turn, pays the retailer a "settlement amount" for its services in providing the product to the buyer. [Walker: col. 5, lines 18-35; FIG. 15] According to Walker, then, the buyer submits an offer including a buyer-defined offer price. [Walker: col. 5, lines 18-35] Clearly then, Walker does not receive an electronic price request, since Walker uses a buyer-submitted offer price instead. Walker's buyer-submitted offer price constitutes a request for the seller to accept the offer or not, rather than any sort of price request. [Walker: col. 5, lines 28-31]

Moreover, since Walker's seller responds to the buyer's offer price by accepting or not, this confirms that the buyer-submitted offer price is clearly not a price request. In particular, Walker endeavors to evaluate a buyer offer rather than to responds to any price request. [Walker: col. 19, lines 45-54; FIG. 9E] Namely, Walker attempts to locate a product in the product database 900 that matches the requirements of the buyer offer. If no such product can be found, then the buyer offer will not be accepted. [Id.] More particularly, the buyer's offer price is compared with any minimum price set by the seller. In the event the buyer's offer price is too low, that product will not be used to accept the offer and the process is repeated with respect to other products. [Walker: col. 19, lines 55-61] Walker's disclosure is silent and consequently non-enabling as to what further operations, if any, occur if the buyer's offer is not accepted. [Walker: Fig. 9E]

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3 MPEP 2131.

Aside from the specific language of Walker, it simply does not make any sense for the buyer to submit an offer price and a price request. The offer price obviates the need for a price request, and is a different thing entirely. Consequently, Walker does not teach "receiving the electronic price request" from a buyer of goods, since Walker uses a buyer-proposed offer instead.

For a number of reasons, Walker further lacks acts of "in response to the electronic price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place." First, since Walker does not teach the claimed electronic price request, Walker necessarily does not show taking any action "in response to the electronic price request...", let alone the claimed feature "determining whether title to the goods passes..." Second, Walker's disclosure does not mention "title" even once, and further does not provide any enabling disclosure as to determining how title passes. Nonetheless, it is clear that title always passes from Walker's retailer to the buyer. Walker's retailer already has goods on their shelves for sale to walk-in customers, thus the retailer presumably has title. [Walker: col. 5, line 66 – col. 6, line 4] Aside from walk-in customers, Walker merely addresses an additional mechanism for selling these products, namely by an online seller (who reimburses the retailer if a sale is made) or by the retailer itself online. In any case, Walker does not care about how title passes, since title presumably goes from the retailer to the buyer in all cases. Further, it is clear that title passes from retailer to buyer directly because of the admitted applicability of state or city sales tax. [Walker: col. 27, lines 54-68 and col. 28, lines 1-10; Fig. 21D] If title passed directly from an out-of-state manufacturer to a local buyer, there would be no state sales tax. Accordingly, Walker does not teach "in response to the electronic

price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place."

The office action cites Walker's column 20, lines 30-64 as being pertinent to determining how title to goods passes. However, a careful of the cited passage reveals a different teaching. Namely, the seller database 1000 (Fig. 10A) is merely used to determine whether the so-called "seller" is the retailer or a remote party. [Walker: col. 20, lines 34-35] In either case, however, the retailer presumably has title since the retailer is holding the goods on their shelves, and offering them for sale to walk-in retail customers. [Walker: col. 5, line 66 - col. 6, line 4] Therefore, the seller database 1000 is merely a tool to determine whether a number of settlement prices or a single price should be used when determining whether a buyer offer will be accepted. In any case, Walker still does not care about how title passes, since title presumably goes from the retailer to the buyer in all cases.

Walker further lacks the claimed operation of "computing a price of the goods to the buyer based at least partially on the determining act", that is, the act of determining how title to goods passes. Lacking act of determining how title to goods passes (as discussed above), Walker necessarily does not show computing a price of goods based at least partially upon such act.

The office action proposes that Walker's Fig. 20 displays a price of goods, and that it is inherent for Walker to compute price since it is actually displayed. [Office Action: page 2 & 9-10] Referring to Walker's col. 30, lines 36-40, the office action suggests that Walker shows that "once the buyer offer has been accepted by the seller, a freeze may be place [*sic*] on the buyer's funds for the amount of the product price,

plus any applicable tax amount calculated, thus indicating that the total price [including tax] is computed to be deducted from the buyer's funds." [Office Action: page 10] Applicant traverses the suggestion that Walker teaches displaying a price of goods. In contrast to the suggested interpretation, the cited passage is actually silent as to any display of price. Therefore, the assumption that, since price is displayed it must be computed is untenable since Walker does not explicitly show that price is even displayed.

More important, Walker's buyer sets his/her own price, and Walker's purchase system merely acts to find a seller, if any, capable of providing the requested goods at that price. Walker does not compute the goods' price based on how title passes. Rather, as discussed below, Walker determines whether to accept the buyer's price or not. [Walker: Abstract]

As Walker evaluates products that might meet the buyer's offered price Walker purportedly does consider whether a product's seller is also the manufacturer (ref. 953, FIG. 9E; FIG. 10A). If the seller is the retailer, the retailer's price is simply used to evaluate the buyer's offer (ref. 956, FIG. 9E); if the manufacturer is the seller, various retailers must be considered to determine which retailer to use, or even whether the buyer's offer should be rejected (ref. 954-955, FIG. 9E). However, in no case does Walker compute a price of goods based on how title passes. In fact, Walker's ultimate output is not the price of goods to the buyer, but rather a decision of whether to accept the buyer's offer. [Walker: ref. 955, FIG. 9E]

In a different context, Walker again considers whether the seller is the manufacturer. [Walker: ref. 1062, FIG. 10B] In this case, the seller/manufacturer inquiry is made during the process of determining how much to pay the retailer (as

opposed to the sales price to the buyer). In the case of a manufacturer seller, the settlement price is provided to the retailer at 1063. On the other hand, when the retailer also acted as the seller, the buyer price may simply be provided to the retailer. [Walker: col. 20, lines 45-64; refs. 1062-1064, FIG. 10B] Therefore, step 1062 merely asks whether the seller is the manufacturer in order to assess payment due to the retailer. This has nothing to do with the claimed feature "computing the price of goods to the buyer..." Consequently, Walker fails to teach computing a price of the goods to the buyer based at least partially on the act of determining how title to goods passes, as claimed.

Although Walker purportedly maintains a pricing database 2000 containing figures such as retail price and settlement price (FIG. 20), this has nothing to do with computing price of goods to the buyer. Rather than anything to do with Walker's online purchasing system 300, the database 2000 merely serves as an example of a database that might be kept by a local retailer in order to keep track of their own prices to be charged to a typical buyer of the street ("retail prices" 2020), and also to track prices that the retailer should expect in exchange for redeeming a voucher for one of Walker's online purchasing system 300 customers. [Walker: col. 26, lines 13-28] These prices have no relation to the actions of Walker's online purchasing system 300 in making sales to buyers. Furthermore, there is no disclosure about how prices in the database 2000 are computed, let alone, that they might be computed "... at least partially on the determining act", that is, the act of determining how title to goods passes, as claimed.

Finally, Walker does not teach "providing the buyer with a machine-readable signal for displaying the computed price." Walker fails to compute a price of goods to the buyer, as discussed above, because the source of Walker's price of goods is the

buyer's offer. Along these lines, Walker would have no need to provide the buyer with a computed price online, since the price originated from the buyer. As discussed above, Walker's consideration of whether the seller was a manufacturer was merely used to determine whether to accept the buyer's offer (ref. 955, FIG. 9E) or to determine how much to pay the retailer (ref. 1063-1064, FIG. 10B). In no case does Walker provide an output price to the buyer.

As mentioned above, Applicant traverses the proposition that Walker teaches displaying a price of goods. The office action cites Walker's column 33, lines 63 through column 34, line 3 as to this feature. [Office Action: page 3] This section, however, merely describes how the buyer receives a receipt when taking possession from the retailer. However, there is no discussion of "providing the buyer with a machine-readable signal for displaying the computed price." Rather, a point-of-sale (POS) register issues the buyer a paper receipt containing store price, produce identifier, and the like. [Walker: col. 33, lines 63-67] The cited passage does not teach "providing the buyer with a machine-readable signal for displaying the computed price" as claimed.

Accordingly, for the foregoing reasons, claim 1 is patentably distinguished from Walker. For similar reasons, independent claims 9 and 17 are also patentably distinguished from Walker. Claim 25 is additionally patentable under the same rationale, and for additional reasons as well. For instance, Walker does not teach "receiving from the buyer an electronic message comprising an RFQ." As discussed in detail above, Walker evaluates a buyer proposed purchase price and accepts it or not. Walker fails to disclose a buyer submitted request for quote. Furthermore, Walker does not teach "responsive to receiving the RFQ, determining a price of the goods based at

least partially upon a manufacturer's specification as to whether title to the goods will pass directly from the manufacturer to the buyer or through an intermediate." Walker fails to contemplate any "manufacturer's specification" of title passage whatsoever. Rather, as discussed above, Walker provides a purchasing system that, for example, uses information in the local product database to determine if a buyer offer will be accepted and/or which products will be used to fulfill the buyer offer. [Walker: col. 18, line 40 – col. 19, line 15] Walker's purchasing system, for example, arranges for the buyer to purchase the product from a "seller," such as the product manufacturer, a retailer, the purchasing system or any other party. [Walker: col. 5, lines 46-53] Accordingly, Walker does not teach determining a price of goods to a buyer based (at least partially) upon the manufacturer's specification as to how title passes. Accordingly, claim 25 is patentable *a fortiori* relative to the reasons given above for patentability of independent claims 1, 9, and 17.

Moreover, even without considering any individual merits of dependent claims 2-8, 10-16, and 18-24, these claims are distinguished because they depend from independent claims 1, 9, or 17, which are distinguished as discussed above.[4]

Nonetheless, an example is given to show features of these dependent claims that even further distinguish over the applied art. Namely, as to claims 6, 14, and 22, the applied art fails to teach the method of determining the price of goods from claim 1 "wherein a discount is determined based on at least one of: an advance scheduling of an order, an industry segment of the buyer, a credit rating of the buyer, and a

4 *Cf.* If an independent claim is nonobvious under 35 USC 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). MPEP 2143.03.

stocking/handling charge." The office action suggested that Walker's consideration of a buyer's address or location somehow constitutes discount determined based on a stocking/handling charge. [Office Action: page 4] Without more, there would not seem to any relation between the buyer's address or location and a stocking/handling charge. Retailers would have a flat fee for handling or stocking, not one that would discriminate against people based on where they live. The suggested interpretation of Walker is not only absent from Walker's figures and text, but it might be illegal under state and federal law. Consequently, Walker does not teach "wherein a discount is determined based on at least one of: an advance scheduling of an order, an industry segment of the buyer, a credit rating of the buyer, and a stocking/handling charge," as claimed. Accordingly, claims 6, 14, 22 are patentable *a fortiori* relative to the reasons given above for patentability of independent claims 1, 9, and 17.

In view of the foregoing, all pending claims in the application are patentable over the applied art. Favorable reconsideration and allowance of the application are hereby requested.

Subparagraph (iv) -- 35 USC 103 REJECTIONS

No grounds of rejection exist under this subparagraph.

Subparagraph (v) -- OTHER GROUNDS OF REJECTION

There are no other grounds of rejection.

CONCLUSION

For the foregoing reasons, the claims in the present application are patentably

distinguished over the cited references. Accordingly, the Examiner should be reversed and ordered to pass the case to issue.

If any fees are required by this submission, an appropriate fee submittal sheet is enclosed herewith. If fees are required yet this sheet is inadvertently missing, or the fees are incorrect in amount, please charge the charge the required fees (or credit any overpayment) to Deposit Account No. 07-1445.

Respectfully submitted,

Michael Glenn

Reg. No. 30,176

Customer 22,862

CLAIMS APPENDIX

1. A computer-implemented method for determining a price of goods made by a manufacturer in response to at least one electronic price request from a buyer for the goods, comprising the acts of: receiving the electronic price request from the buyer;

in response to the electronic price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place;

computing a price of the goods to the buyer based at least partially on the determining act;

providing the buyer with a machine-readable signal for displaying the computed price.

2. The method of Claim 1, wherein a first pricing regime is implemented when it is determined that title to the goods passes directly from the manufacturer to the buyer.

3. The method of Claim 2, wherein when it is determined that title passes through an intermediate e-market place, the method further includes determining whether to implement the first pricing regime or a second pricing different than the first pricing regime.

4. The method of Claim 3, further comprising the act of:

determining whether to discount a price.

5. The method of Claim 4, wherein a discount is determined based on at least one of: volume of a current order, volume of annual orders, and projected volume of orders.

6. The method of Claim 4, wherein a discount is determined based on at least one of: an advance scheduling of an order, an industry segment of the buyer, a credit rating of the buyer, and a stocking/handling charge.

7. The method of Claim 3, further comprising the act of:

determining whether to customize a price.

8. The method of Claim 7, wherein the price is customized based on at least one of: geographic region, customer information, product line information, manufacturer information.

9. A computer having logic executable by the computer to perform method acts for determining a price of goods made by a manufacturer in response to at least one electronic price request from a buyer for the goods, said method acts comprising:

receiving the electronic request from the buyer;

in response to the electronic request, determining whether title to the goods passes directly from a manufacturer to a buyer or through an intermediate e-market place;

computing a price of the goods to the buyer based at least partially on the

determining act;

providing the buyer with a machine-readable signal for displaying the computed price.

10. The computer of Claim 9, further including logic for executing a method act comprising:

implementing a first pricing regime when it is determined that title to the goods passes directly from the manufacturer to the buyer.

11. The computer of Claim 10, further including logic for executing a method act comprising:

when it is determined that title passes through an intermediate e-market place, determining whether to implement the first pricing regime or a second pricing regime.

12. The computer of Claim 11, further including logic for executing a method act comprising:

determining whether to discount a price.

13. The computer of Claim 12, wherein a discount is based on at least one of: volume of a current order, volume of annual orders, and projected volume of orders.

14. The computer of Claim 12, wherein a discount is based on at least one of: an advance scheduling of an order, an industry segment of the buyer, a credit rating of

the buyer, and a stocking/handling charge.

15. The computer of Claim 11, further including logic for executing a method act comprising:

determining whether to customize a price.

16. The computer of Claim 15, wherein the price is customized based on at least one of: geographic region, customer information, product line information, manufacturer information.

17. A computer program product having logic means executable by a computer to determine a price of goods made by a manufacturer in response to at least one electronic price request from a buyer for the goods, comprising:

computer readable code means for receiving the electronic price request from the buyer;

computer readable code means responsive to receiving the electronic price request for determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place;

computer readable code means for computing a price of the goods to the buyer based at least partially on the determining;

computer readable code means for providing the buyer with a machine-readable signal for displaying the computed price.

18. The computer program product of Claim 17, further including:

computer readable code means for implementing a first pricing regime when it is determined that title to the goods passes directly from a manufacturer to a buyer.

19. The computer program product of Claim 18, further including:

computer readable code means for determining whether to implement the first pricing regime or a second pricing regime when it is determined that title passes through an intermediate e-marketplace.

20. The computer program product of Claim 19, further including:

computer readable code means for determining whether to discount a price.

21. The computer program product of Claim 20, wherein a discount is based on at least one of: volume of a current order, volume of annual orders, and projected volume of orders.

22. The computer program product of Claim 21, wherein a discount is based on at least one of: an advance scheduling of order, an industry segment of the buyer, a credit rating of the buyer, and a stocking/handling charge.

23. The computer program product of Claim 19, further including:

computer readable code means for determining whether to customize a price.

24. The computer program product of Claim 23, wherein the price is customized based on at least one of: geographic region, customer information, product line information, manufacturer information

25. At least one digital data processing machine programmed to cooperatively perform operations for determining a price of goods made by a manufacturer in response to at least one electronic request for quote (RFQ) from a prospective buyer of the goods, the operations comprising:

receiving from the buyer an electronic message comprising an RFQ;

responsive to receiving the RFQ, determining a price of the goods based at least partially upon a manufacturer's specification as to whether title to the goods will pass directly from the manufacturer to the buyer or through an intermediate;

transmitting an electronic message representing the determined price to the buyer.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.

APPENDIX A

Applicant's Figures

OIPE IAP84
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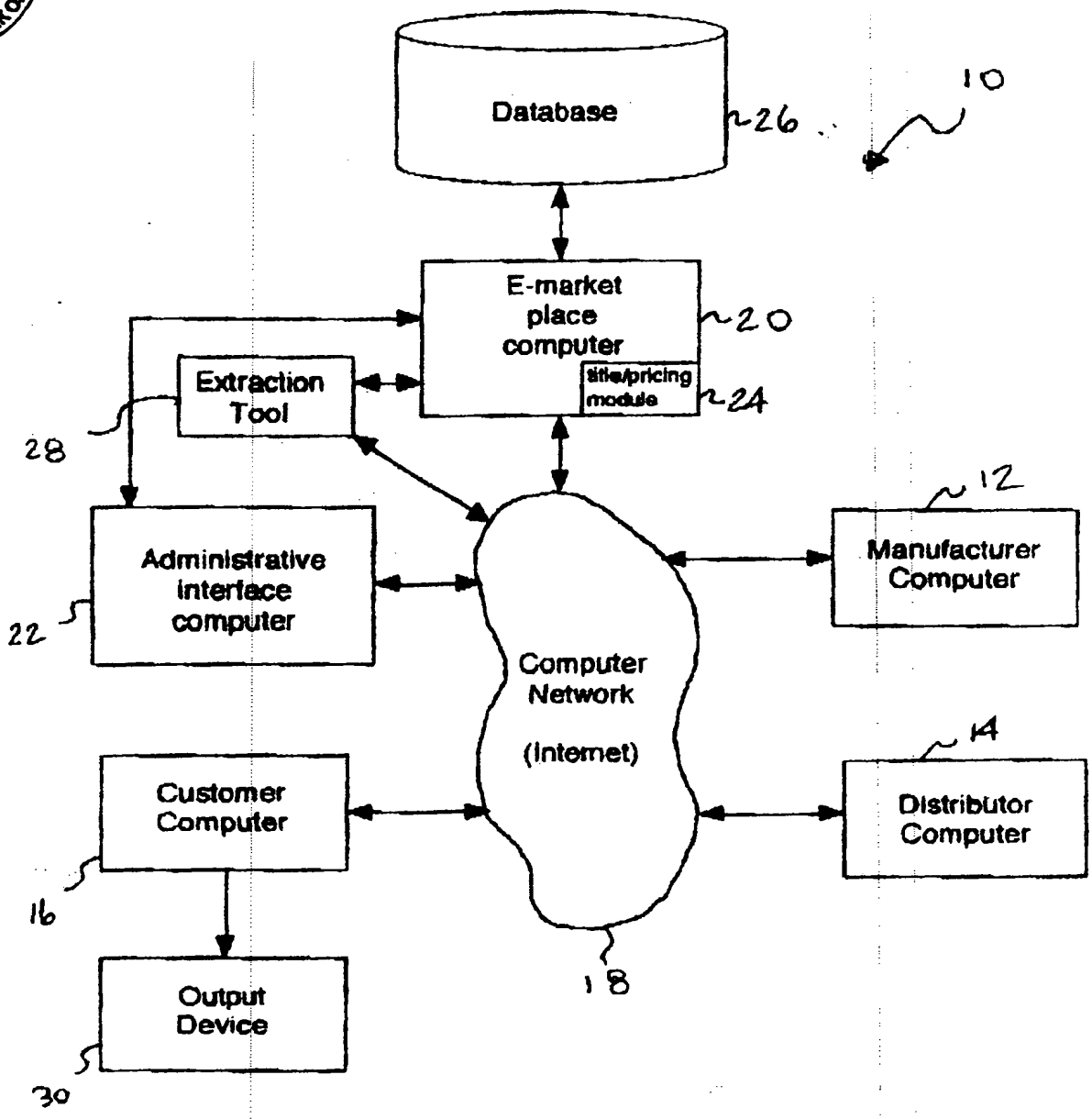

FIG. 1

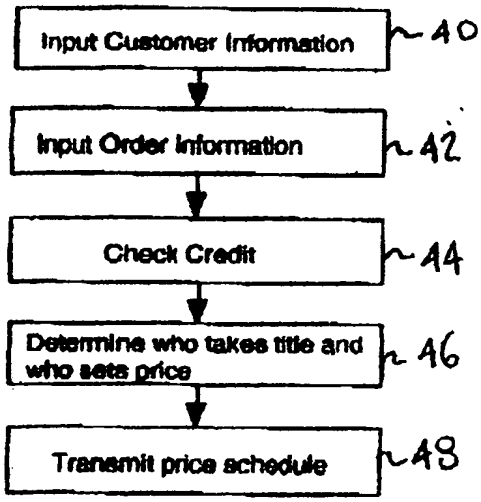
Input Customer Information
40
Input Order Information
42
Check Credit
44
Determine who takes title and who sets price
46
Transmit price schedule
48

FIG. 2

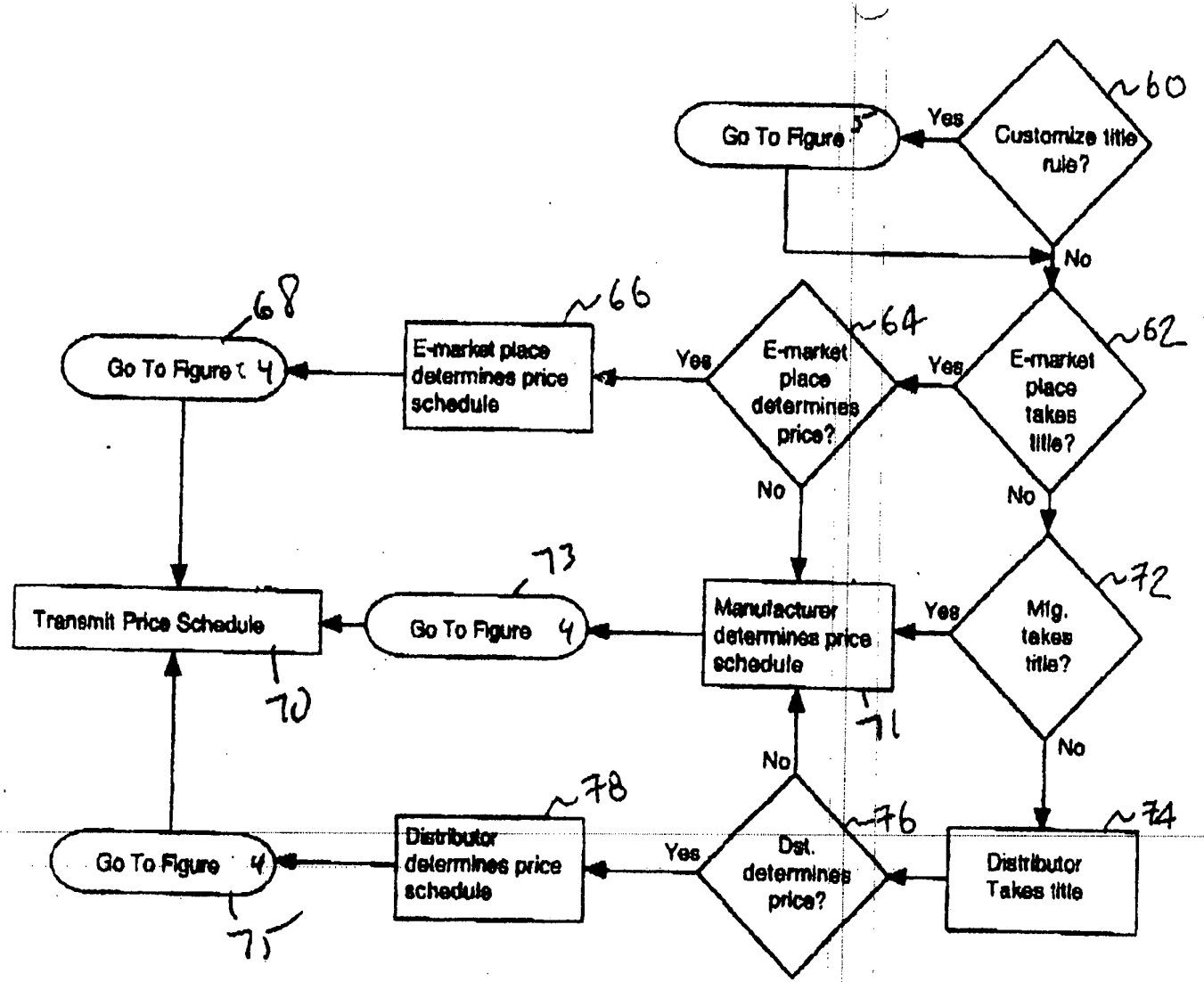
Go To Figure 5
Yes
Customize title rule?
60
No
Go To Figure 4
68
E-market place determines price schedule
66
Yes
E-market place determines price?
64
Yes
E-market place takes title?
62
No
No
Transmit Price Schedule
70
Go To Figure 4
73
Manufacturer determines price schedule
71
Yes
Mfg. takes title?
72
No
No
Go To Figure 4
75
Distributor determines price schedule
78
Yes
Dst. determines price?
76
Distributor Takes title
74

Figure 3

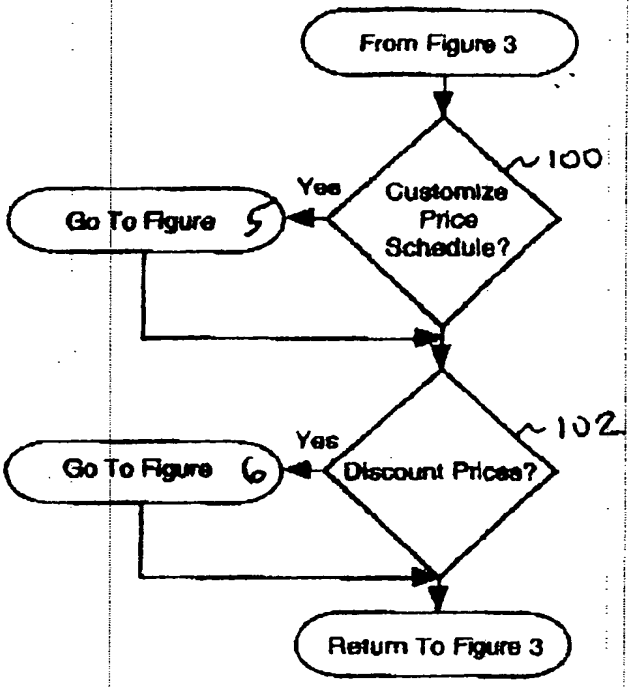
From Figure 3
100
Customize Price Schedule?
Yes
Go To Figure 5
102
Discount Prices?
Yes
Go To Figure 6
Return To Figure 3

FIG. 4

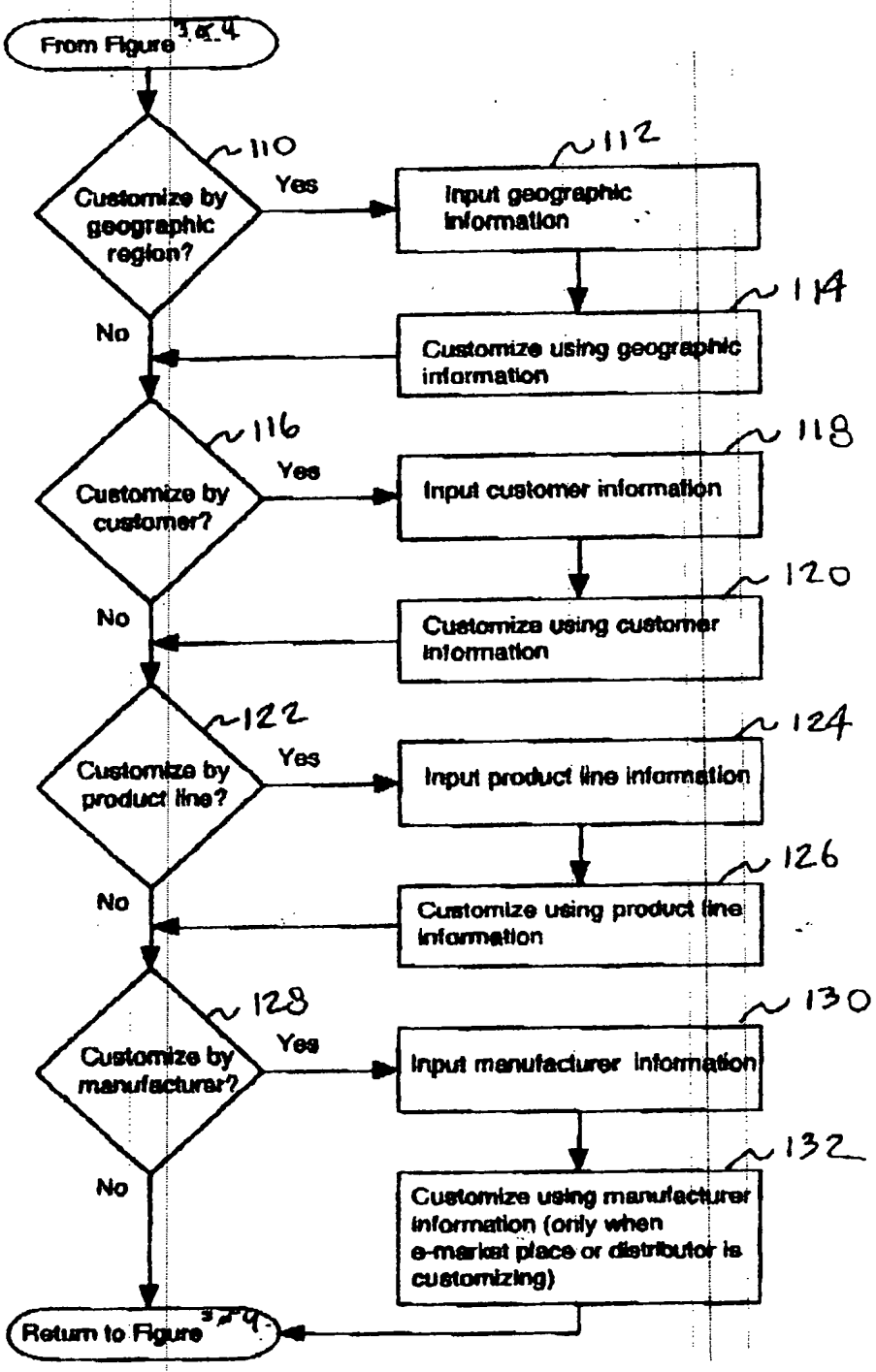
From Figure 3&4
110
Customize by geographic region?
Yes
112
Input geographic information
No
114
Customize using geographic information
116
Customize by customer?
Yes
118
Input customer information
No
120
Customize using customer information
122
Customize by product line?
Yes
124
Input product line information
No
126
Customize using product line information
128
Customize by manufacturer?
Yes
130
Input manufacturer information
No
132
Customize using manufacturer information (only when e-market place or distributor is customizing)
Return to Figure 3&4

Figure 5

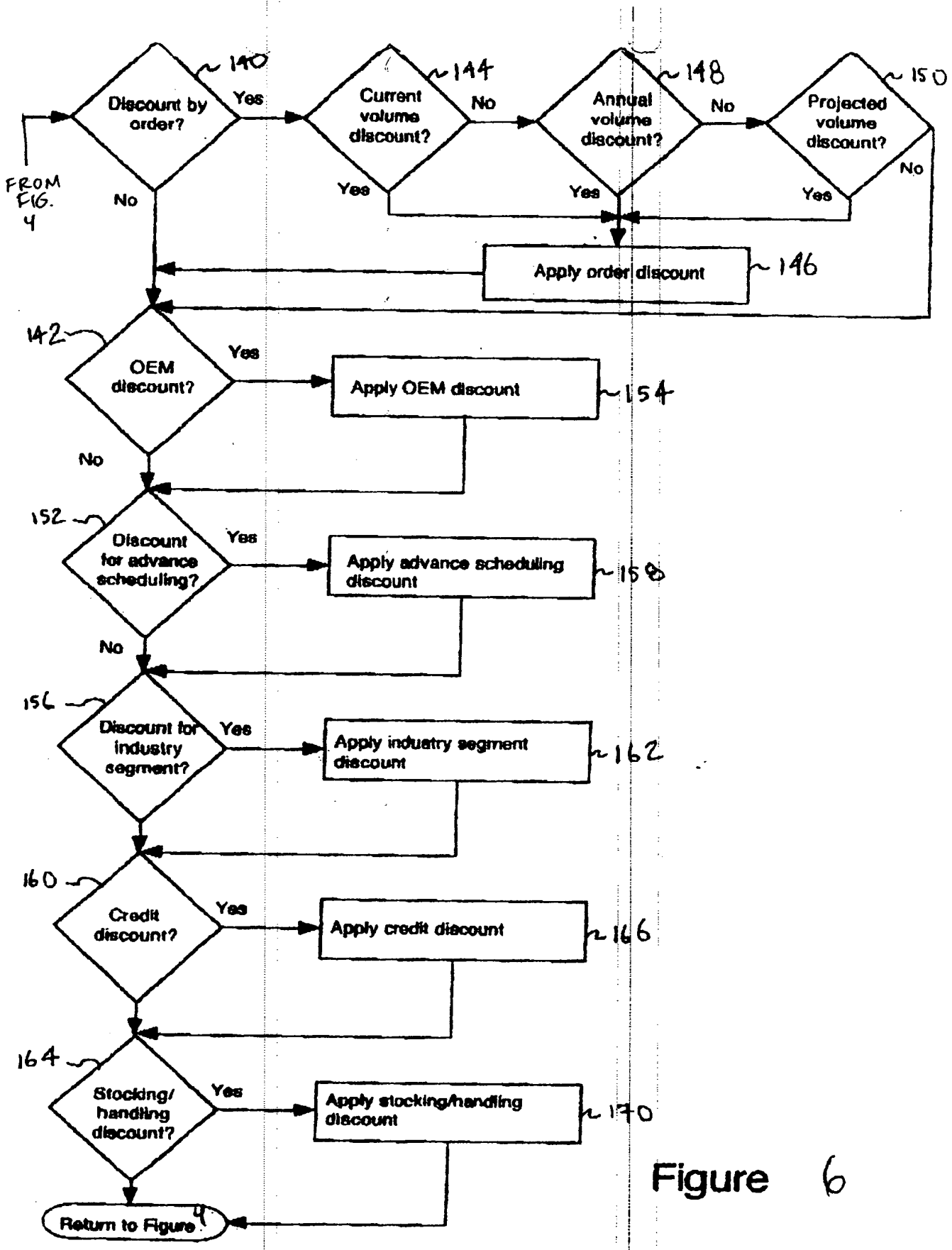
FROM FIG. 4
Discount by order?
140
Yes
No
Current volume discount?
144
Yes
No
Annual volume discount?
148
Yes
No
Projected volume discount?
150
Yes
No
Apply order discount
146
OEM discount?
142
Yes
No
Apply OEM discount
154
Discount for advance scheduling?
152
Yes
No
Apply advance scheduling discount
158
Discount for industry segment?
156
Yes
No
Apply industry segment discount
162
Credit discount?
160
Yes
No
Apply credit discount
166
Stocking/ handling discount?
164
Yes
No
Apply stocking/handling discount
170
Return to Figure 4

Figure 6

APPENDIX B

Final Office Action

ENOS0003

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,550	04/26/2001	Raymond S. Bamford	ENSY-004	9238

22862 7590 01/09/2006

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

OIPE IAP84 MAR 08 2006 PATENT & TRADEMARK OFFICE

ACKNOWLEDGE RECEIPT
JAN 12 2006
GLENN PATENT GROUP

EXAMINER	
ROBINSON BOYCE, AKIBA K	
ART UNIT	PAPER NUMBER
3639	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

GPG
U.S.: V FOREIGN:
DOCKETED: 1/16/06 BY: EL
ACTION: Final Rejection
DUE DATE: 2mo 3-9 3 mo 4-9-06
EXT: 1ST 2ND 3RD
DOCKET# ENOS0003 ATTY: Dan H.

JPE IAP84 MAR 08 2006 PATENT & TRADEMARK OFFICE

Office Action Summary	Application No.	Applicant(s)	
	09/843,550	BAMFORD ET AL.	
	Examiner	Art Unit	
	Akiba K. Robinson-Boyce	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 27 October 2005.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-25 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. Due to communications filed 7/28/05, the following is a final office action. Claims 1, 6, 9, 14, 17, 22 and 25 are amended. Claims 1-25 are pending in this application and have been examined on the merits. Claims 1-25 are rejected as follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (US 6,754,636).

As for Claim 1 , Walker et al. discloses a method comprising:

receiving the electronic price request for the buyer, (see Figs. IB, IOB, 26A, 26B);

in response to the electronic price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place (col. 20, lines 30-64);

computing a price of the goods to the buyer based at least partially on the determining act, (see Fig. 20 for displaying the price of the goods, in this case, it is inherent for the price to be computed if it is actually displayed, also, col. 30, lines 36-40,

shows that once the buyer offer has been accepted by the seller, a freeze may be place on the buyer's funds for the amount of the product price, plus any applicable tax amount calculated, thus indicating that the total price [including tax] is computed to be deducted from the buyer's funds).

Providing the buyer with a machine-readable signal for displaying the computed price, (Col. 33, line 63-col. 34, line 3, shows that the POS register receives a verification signal and processes the transaction, which issues the buyer a receipt for an amount due).

As for Claim 2, Walker et al. further discloses the method wherein a first pricing regime is implemented when it is determined that title to the goods passes directly from the manufacturer to the buyer (This is inherently true for all the direct transactions between the buyer and manufacturers. Otherwise, the manufacturer will commit fraud by not delivering the title to the buyer who paid for the goods. See Supra Figs. IOB, 26A, B).

As for Claim 3, Walker et al. further discloses the method, wherein when it is determined that title passes through an intermediate e-market place, the method further includes determining whether to implement the first pricing regime or a second pricing regime (see Supra column and col. 36, lines 7-19; col. 37, lines 15-30).

As for Claim 4, Walker et al. further discloses the method including the step of determining whether to discount a price (see Id.).

As for Claim 5, Walker et al. further discloses the method, wherein a discount is determined based on volume of a current order (see supra column 37).

As for Claim 6, Walker et al. further discloses the method, wherein a discount is determined based on: a stocking/handling charge (the buyer's address or location is pertinent to this, see col . 37, lines 5-30).

As for Claim 7, Walker et al. further discloses the method including the step of determining whether to customize the price (see Supra columns for customizing the price for a specific customer).

As for Claim 8, Walker et al. further discloses the method, wherein the price is customized based on: geographic region, customer information, product line information, manufacturer information (see Supra column 37).

As Claim 9, Walker et al. discloses a computer having logic programmable to execute method acts, method acts comprising:

receiving the electronic request form the buyer, (see Figs. IB, IOB, 26A, 26B);

in response to the electronic request, determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place (col. 20, lines 30-64).,

computing a price of the goods to the buyer based at least partially on the determining act, (see Fig. 20 for displaying the price of the goods, in this case, it is inherent for the price to be computed if it is actually displayed, also, col. 30, lines 36-40, shows that once the buyer offer has been accepted by the seller, a freeze may be place on the buyer's funds for the amount of the product price, plus any applicable tax amount calculated, thus indicating that the total price [including tax] is computed to be deducted from the buyer's funds).

Providing the buyer with a machine-readable signal for displaying the computed price, Col. 33, line 63-col. 34, line 3, shows that the POS register receives a verification signal and processes the transaction, which issues the buyer a receipt for an amount due).

As for Claim 10, Walker et al. further discloses the logic, wherein a first pricing regime is implemented when it is determined that title to the goods passes directly from the manufacturer to the buyer (This is inherently true for all the direct transactions between the buyer and manufacturers. Otherwise, the manufacturer will commit fraud by not delivering the title to the buyer who paid for the goods. See Supra Figs. IOB, 26A, B).

As for Claim 11, Walker et al. further discloses the computer, wherein when it is determined that title passes through an intermediate e-market place, the method further includes determining whether to implement the first pricing regime or a second pricing regime (see Supra column and col. 36, lines 7-19', col. 37, lines 15-30).

As for Claim 12, Walker et al. further discloses the logic programmable to determine whether to discount a price (see Id.).

As for Claim 13, Walker et al. further discloses the logic, wherein a discount is determined based on volume of a current order (see Supra column 37).

As for Claim 14, Walker et al. further discloses the logic, wherein a discount is determined based on: a stocking/handling charge (the buyer's address or location is pertinent to this, see col. 37, lines 5-30).

As for Claim 15, Walker et al. further discloses the logic programmable to

determine whether to customize the price (see Supra columns for customizing the price for a specific customer).

As for Claim 16. Walker et al. further discloses the logic, wherein the price is customized based on: geographic region, customer information, product line information, manufacturer information (see Supra column 37).

As for Claim 17, Walker et al. discloses a computer program product comprising:

computer readable code means for receiving the electronic price request from the buyer, (see Figs. IB, IOB, 26A, 26B);

computer readable code means responsive to receiving the electronic price request for determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place, (col. 20, lines 30-64),

computer readable code means for computing a price of the goods to the buyer based at least partially on the determining, (see Fig. 20 for displaying the price of the goods, in this case, it is inherent for the price to be computed if it is actually displayed, also, col. 30, lines 36-40, shows that once the buyer offer has been accepted by the seller, a freeze may be place on the buyer's funds for the amount of the product price, plus any applicable tax amount calculated, thus indicating that the total price [including tax] is computed to be deducted from the buyer's funds).

Computer readable code means for providing the buyer with a machine-readable signal for displaying the computed price, Col. 33, line 63-col. 34, line 3, shows that the POS register receives a verification signal and processes the transaction, which issues the buyer a receipt for an amount due).

As for Claim 18, Walker et al. further discloses the computer program product, wherein a first pricing regime is implemented when it is determined that title to the goods passes directly from the manufacturer to the buyer (This is inherently true for all the direct transactions between the buyer and manufacturers. Otherwise, the manufacturer will commit fraud by not delivering the title to the buyer who paid for the goods. See Supra Figs. IOB, 26A, B).

As for Claim 19, Walker et al. further discloses the computer program product, wherein when it is determined that title passes through an intermediate e-market place, the method further includes determining whether to implement the first pricing regime or a second pricing regime (see Supra column and col. 36, lines 7-19*, col. 37, lines 15-30).

As for Claim 20, Walker et al. further discloses the computer program product including the computer readable code means for determining whether to discount a price (see Id.).

As for Claim 21, Walker et al. further discloses the computer program product, wherein a discount is determined based on volume of a current order (see Supra column 37).

As for Claim 22, Walker et al. further discloses the computer program product, wherein a discount is determined based on: a stocking/handling charge (the buyer's address or location is pertinent to this, see col. 37, lines 5-30).

As for Claim 23, Walker et al. further discloses the computer program product including the computer readable code means for determining whether to customize the

price (see Supra columns for customizing the price for a specific customer).

As for Claim 24, Walker et al. further discloses the computer program product, Wherein the price is customized based on: geographic region, customer information, product line information, manufacturer information (see Supra column 37).

As for Claim 25, Walker et al. discloses a data processing machine programmed to perform operations, the operations comprising:

receiving the request for quote/receiving form the buyer an electronic message comprising an RFQ, (see Figs. IB, IOB, 26A, 26B);

responsive to receiving the RFQ, determining a price of the goods based at least partially upon a manufacturer's specification as to whether title to the goods will pass directly from the manufacturer to the buyer or through an intermediate, (col. 20, lines 30-64),

transmitting an electronic message representing a price of the goods to the buyer based at least partially on the determining step (see Fig. 20 for displaying the price of the goods).

Response to Arguments

4. Although claim 25 was originally rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (US 6,754,636) along with claims 1-24, the examiner has re-written the introduction to paragraph 3 to include claim 25 as also being rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (US 6,754,636) in order to clarify some typographical errors.

5. Applicant's arguments, see pages 7 and 8 of the remarks, filed 10/27/05, with respect to claims 1-24, have been fully considered and are persuasive. The 35 U.S.C. 101 rejection of claims 1-24 (and including claim 25) has been withdrawn.

Applicant's arguments filed 10/27/05 have been fully considered but they are not persuasive.

First, the applicant argues that Walker diverges from claim 1 since, according to applicant, Walker's purchasing system acts responsive to a buyer offer (including a buyer-defined offer price), where if a seller agrees to the buyer's offer, the buyer pays and a retailer make the product available to the buyer, and pays the retailer a "settlement amount" for its services in providing the product to the buyer, where the present invention determines a price of goods made by a manufacturer in response to at least one electronic price request from a buyer. However, in Walker et al, the Conditional Purchase Offer, or CPO is made by the buyer. In the Walker et al reference, it is disclosed that the CPO may be an electronic message that includes an offer price from a buyer. The CPO therefore represents the electronic request since it is an electronic order that includes a requested offer price for a product. Since the buyer pays an amount equal to the price that the seller agrees to, this price is the determined price according to the offer since this is the price that is determined for the buyer to pay for the goods.

As per claim 1, the applicant also argues that Walker et al fails to disclose "computing a price of the goods to the buyer based at least partially on the determining act". However, as disclosed above in the rejection, Fig. 20 shows how prices of the

goods are displayed, and, in this case, it is inherent for the price to be computed if it is actually displayed. Also, in col. 30, lines 36-40, Walker et al shows that once the buyer offer has been accepted by the seller, a freeze may be place on the buyer's funds for the amount of the product price, plus any applicable tax amount calculated, thus indicating that the total price [including tax] is computed to be deducted from the buyer's funds.

Finally, the applicant argues that Walker et al does not disclose "providing the buyer with a machine-readable signal for displaying the computed price" as disclosed in claim 1. However, in Col. 33, line 63-col. 34, line 3, Walker et al shows that the POS register receives a verification signal and processes the transaction, which issues the buyer a receipt for an amount due according to the accepted offer, which indicates displaying the computed price.

For similar reasons as independent claim 1, independent claims 9 and 17 are also still rejected by Walker et al. Therefore, dependent claims 2-8, 10-16 and 18-24 are still rejected by the Walker et al patent.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 571-272-6734. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

A. R. B.
January 2, 2006

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

APPENDIX C

Walker Reference

OIPE IAP64 MAR 08 2006 PATENT & TRADEMARK OFFICE

PTO/SB/17 (12-04v2)
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FEE TRANSMITTAL
For FY 2005

☑ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 250

Complete if Known	
Application Number	09/843,550
Filing Date	April 26, 2001
First Named Inventor	Bamford, et al.
Examiner Name	A. Robinson-Boyce
Art Unit	3639
Attorney Docket No.	ENOS0003

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES Fee ($)	FILING FEES Small Entity Fee ($)	SEARCH FEES Fee ($)	SEARCH FEES Small Entity Fee ($)	EXAMINATION FEES Fee ($)	EXAMINATION FEES Small Entity Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 20 or HP =	_____	x _____	= _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 3 or HP =	_____	x _____	= _____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims Fee ($)	Multiple Dependent Claims Fee Paid ($)
_____	_____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
_____ - 100 =	_____	/ 50 = _____ (round up to a whole number)	x _____	= _____

4. OTHER FEE(S)

	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	
Other (e.g., late filing surcharge): Filing a brief in support of an appeal (1402)	250

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 30,176	Telephone 650-474-8400
Name (Print/Type)	Michael A. Glenn		Date 03/08/2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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OIPE IAP84
MAR 08 2006
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on March 8, 2006
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Kristianne Serrano
Typed or printed name of person signing Certificate

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- Certificate of Mailing (1 page);
- Notice of Appeal (1 page, in duplicate);
- Fee Transmittal (1 page, in duplicate);
- Appeal Brief (18 pages);
- Evidence Appendix;
- Claims Appendix;
- Related Proceedings Appendix;
- Appendix A - Applicant's Figures;
- Appendix B - Final Office Action;
- Appendix C - Walker Reference; and
- Return Postcard.

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